

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CAUSE NO. 1:22-cv-00322-WO-LPA**

**MARY A. BARNHILL as Administratrix
of the Estate of KAREN FAYE
ROLLINS BARNHILL**

PLAINTIFF

v.

**ACCORDIUS HEALTH AT
GREENSBORO, LLC d/b/a ACCORDIUS
HEALTH AT GREENSBORO;
ACCORDIUS HEALTH, LLC**

DEFENDANTS

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S EXPERT WITNESS

NOW COME Defendants, Accordius Health at Greensboro, LLC, d/b/a Accordius Health at Greensboro ("Accordius Greensboro"); and Accordius Health, LLC ("Accordius Health"); (hereinafter referred to collectively as the "Defendants"), by and through undersigned counsel, file this Motion to Strike Plaintiff's Expert Witness, and would state as follows:

1. Plaintiff filed this medical malpractice action on April 26, 2022, alleging negligence arising out of care and treatment provided to Karen Faye Rollins Barnhill while a resident at the subject skilled nursing facility, Accordius Health at Greensboro from March 3-5, 2020. *See* ECF No. 1-1.

2. On May 18, 2022, a Joint Rule 26(f) Report was submitted to the Court. *See* ECF No. 13. Pursuant to the Report, Plaintiff was to serve her expert reports on February 15, 2023, Defendants were to serve their expert reports on April 15, 2023, and discovery was to conclude on July 15, 2023. *Id.*

3. On May 20, 2022, the Court entered Case Management Text Order adopting the dates provided in the Joint Rule 26(f) Report.

4. On May 4, 2023, parties filed a Joint Motion to Amend or Alter the Scheduling Order to amend the previous dates set forth in the Rule 26(f) report. *See* ECF No. 29. The next day this Court denied said motion via a text order.

5. Over two and a half months later, or on July 20, 2023, Plaintiff untimely served her Designation of Expert Witnesses and corresponding expert reports upon counsel for Defendants. Therein, Plaintiff disclosed Kathleen Hill-O'Neill DNP, RN, CRNP, NHA, and James G. Lowe, M.D., as expert witnesses, along with their corresponding reports. *See* ECF No. 30.

6. The Court should strike Plaintiff's untimely expert reports. Pursuant to Local Uniform Rule 16.1(e) "The initial pretrial order [...] based upon a joint Rule 26(f) Report [...] shall provide that discovery with respect to experts be conducted within the discovery period established in the case." LR 16.1(e). Further, "[t]he order shall set the date on which disclosure of expert information under Fed.R.Civ.P. 26(a)(2) must be made." *Id.* "A party that fails to provide [expert] disclosures unfairly inhibits its opponent's ability to properly prepare, unnecessarily prolongs litigation, and undermines the district court's management of the case." *Campbell v. United States*, 470 F. App'x 153 (4th Cir. 2012) (quoting *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 278–79 (4th Cir.2005)). Pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure a party who fails to properly designate an expert witness as required by Rule 26(a) may not use the expert "on a motion, at hearing, or at trial, unless the failure was substantially justified or harmless" Fed. R. Civ. P. 37(c)(1)).

7. Defendants are unfairly prejudiced by Plaintiff's untimely expert witness designations and reports. Plaintiff's expert designation and disclosure deadline, set by the Joint Rule 26(f) Report, has now passed, as has the discovery deadline. Because of the untimely designation of expert witnesses, Defendants are now left without any opportunity to conduct

additional discovery, depose Plaintiff's expert witness, and provide adequate expert reports of their own.

8. The Court should preclude Ms. Kathleen Hill –O'Neill and Dr. James G. Lowe from testifying as expert witnesses because their designations and written reports were untimely pursuant to the Joint Rule 26(f) Report. As such, any opinions Ms. Hill-O'Neill and Dr. James G. Lowe may offer as to the standard of care and to causation are due to be stricken.

Respectfully submitted, this the 8th day of August, 2023.

**ACCORDIUS HEALTH AT GREENSBORO,
LLC, d/b/a ACCORDIUS HEALTH AT
GREENSBORO; ACCORDIUS HEALTH, LLC;
GREENSBORO TWO PROPCO, LLC,**

By: HAGWOOD AND TIPTON, PC

By: /s/ Michael E. Phillips
Michael E. Phillips (NCSB No. 45198)

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

_____ Depositing a copy hereof, postage paid, in the United States Mail, addressed to the attorney for each said party as follows:

 X Via electronic mail addressed to the attorney for each party as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Telecopying a copy hereof to the attorney for each said party as follows:

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Attorneys for Plaintiff

This, the 8th day of August, 2023.

/s/ Michael E. Phillips
Michael E. Phillips